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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE:

SRC 07 260 55863

Office: TEXAS SERVICE CENTER Date:

SEP 30 2009

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on August 28, 2007, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel argues that the director failed to properly evaluate the evidence submitted by the petitioner.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.--

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Molecular Biology and Biotechnology issued by the Indian Agricultural Research Institute in 2004. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep’t of Transp., 22 I&N Dec. 215, 216 (Comm. 1998) [hereinafter “*NYSDOT*”], has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

We note that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

At the time of filing, the petitioner was working as a postdoctoral Visiting Fellow in the Endocrinology and Reproduction Research Branch, National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH). The petitioner worked under the supervision of [REDACTED] Chief and Head of the Section on Molecular Endocrinology. In the summer of 2008, the petitioner joined the laboratory of [REDACTED] Assistant Professor of Pediatrics, Division of Newborn Medicine, Children’s Hospital Boston, Harvard Medical School. We concur with the director that the petitioner works in an area of intrinsic merit, biomedical research (endocrinology, reproductive biology, cancer biology, and neonatal hematology), and that the proposed benefits of his work would be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien’s own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218.

Moreover, it cannot suffice to state that the alien possesses useful skills, or a “unique background.” *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner’s contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Along with documentation pertaining to his field of research, the petitioner submitted several letters of support.

states:

In his work on Oncology and Experimental therapeutics at University of South Florida, [the petitioner] investigated the inhibition of histone deacetylases (HDACs) as a new strategy in human cancer therapy. The cellular models that he utilized in these studies include human breast cancer and leukemia cells. An additional major focus of research was to determine the molecular mechanisms by which histone modifications, e.g., acetylation, de-methylation and phosphorylation, molecular determinants in human breast cancer and leukemia cells. The effects of histone deacetylase inhibitors on Her-2, AKT and c-Raf in breast cancer cells, BCR ABL and FLT-3 in leukemia, as well as the effect on the levels of c-FLIP and TRAIL death receptors in leukemia cells, were investigated. Histone deacetylase (HDAC) inhibitors are emerging as an exciting new class of potential anticancer agents for the treatment of solid and hematological malignancies. These drugs used have shown impressive anticancer activity *in vivo* with remarkably little toxicity in preclinical studies and are currently in phase I clinical trial.

[The petitioner’s] expertise has been significantly advanced since his participation in the NIH program, where his experience was comprehensively broadened through conducting studies in the interdisciplinary areas involving endocrinology, molecular biology, and cellular biology. At the National Institutes of Health, [the petitioner] is investigating on a novel testicular gene, the Gonadotropin-regulated testicular RNA helicase (GRTH/Ddx25). He first demonstrated that GRTH is a major regulator of spermatogenesis in the prevention of testicular germ cell apoptosis. Subsequently, [the petitioner] demonstrated that GRTH is an integral component of mRNP particles, a phosphoprotein, which is essential for testicular germ cells development in our gene targeted mouse model. He studied the subcellular localization and phosphor-modification of GRTH and demonstrated two GRTH protein species that are differentially distributed in cellular compartment of mouse testis. [The petitioner’s] elucidation of the regulation of pro- and anti-apoptotic protein expression by GRTH in gonadal cells has shed new insights into the understanding of the mechanism involved in the male reproduction.

While the petitioner's superiors at the University of South Florida assigned him to investigate the inhibition of histone deacetylases (LIDACs) as a new strategy in human cancer therapy, there is no evidence showing that he conceived this treatment strategy or that the intellectual property rights for the drugs involved in the phase I clinical trial were primarily attributable to his original work. Moreover, there is no evidence demonstrating that the clinical trials were successful or that the petitioner's work has had a significant degree of influence on his field.

Senior Staff Scientist, Section on Molecular Endocrinology, NICHD, NIH, states:

In NIH, [the petitioner] is investigating on a testicular novel gene Gonadotropin-regulated testicular RNA helicase (GRTH/Ddx25). He first demonstrated that GRTH is a master regulator of spermatogenesis in the prevention of testicular germ cell apoptosis. Subsequently, [the petitioner] demonstrated that GRTH is an integral component of mRNP particles, a phosphoprotein, which is essential for testicular germ cells development in our gene targeted mouse model. He studied on the subcellular localization and phosphor-modification of GRTH and demonstrated two GRTH protein species that are differentially distributed in cellular compartment of mouse testis. . . . He also demonstrated participation of cAMP-PKA in the post-translational modification of the 61 kDa GRTH species. [The petitioner] also helped in developing micro array analysis for germ cell specific RNA expression profiles. [The petitioner's] elucidation of the regulation of pro- and anti-apoptotic protein expression by GRTH in gonadal cells sheds new insights on the understanding of the mechanism involved in the male reproduction.

Throughout these projects, [the petitioner] has developed himself to a knowledgeable and capable reproduction biologist and molecular endocrinologist. [The petitioner] is a co-author of several papers in this subject and some other papers are in the process for publication. [The petitioner] . . . was also selected to present his study to the International Annual meeting of the Endocrine Society (2007) in Toronto, Canada this June.

In the same manner as Assistant Professor and Interim Chief, Division of Pediatric Hematology/Oncology, University of Florida, discusses the petitioner's conference presentations and publications. states:

[The petitioner] worked at the prestigious National Institutes of Health where he has made seminal contributions to studies on characterization of the function and regulation of Gonadotropin-Regulated Testicular Helicase (GRTH), an enzyme that is critical for the progression of sperm maturation. . . . For this project [the petitioner] was exposed to cutting edge gene expression screening technologies as they became available and as a result acquired an advanced level of expertise in the genomics field. He developed innovative strategies for understanding the process of sperm maturation. He has been invited to present evidence of his work at a large number of international scientific meetings and conferences including the Keystone Meeting in Colorado, America Society for Biochemistry and

Molecular Biology in San Diego, and Endocrine Society in Toronto, Canada and San Francisco, CA. . . . His work . . . was accepted for publication in top ranking journals like *Journal of Biological Chemistry* and *Human Molecular Reproduction*.

The petitioner submitted evidence of his co-authorship of articles appearing in publications such as *Journal of Biological Chemistry*, *Plant Cell Biotechnology* and *Molecular Biology*, and *Molecular Human Reproduction*. The petitioner also submitted evidence showing that he coauthored papers for presentation at scientific conferences such as the American Society of Hematology's 45th Annual Meeting and the Endocrine Society's 89th Annual Meeting. We note that publication in journals and conference proceedings is inherent to scientific research.¹ For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by his work and are familiar with it. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field.

The petitioner initially submitted search results from Google Scholar demonstrating a single cite to his published articles. We note that this single citation was a self-citation.² The petitioner also submitted search results from ISI Web of Science reflecting five cites to his work, two of which were self-citations. In response to the director's request for evidence, the petitioner submitted additional search results from Google Scholar and copies of five articles that cite to his work. This documentation reflects that the petitioner's body of work has been cited approximately ten times. While these citations demonstrate a small degree of interest in his published and presented work, the limited number of submitted citations is not sufficient to demonstrate that his work has significantly influenced his field as a whole or otherwise sets him apart from other researchers in the biomedical field.

Associate Professor of Pharmacology and Adjunct Research Dean of the Federal University of Santa Maria, Brazil, states:

¹ For "Biological Scientists," the Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at <http://www.bls.gov/oco/>), states that a "solid record of published research is essential in obtaining a permanent position involving basic research." See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm>, accessed on September 16, 2009, copy incorporated into the record of proceeding. The handbook also provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm>, accessed on September 16, 2009, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reinforces USCIS's position that authorship of scholarly articles does not set the petitioner apart from others in his field; we must consider the research community's reaction to those articles.

² Self-citation is a normal, expected practice among researchers in the scientific community. Self-citation cannot, however, demonstrate the response of independent researchers.

[The petitioner's] inventive research and development work in the field of the Cancer therapy for the treatment of those suffering from Leukemia and Breast Cancer has led to path breaking therapy predictions for these diseases. For the first time he used the combination of the drugs (LBH589 and 17-AAG) in acute myeloid leukemia (AML) and chronic myelogenous leukemia (CML) cells.

* * *

[The petitioner] has developed himself to a knowledgeable and capable reproduction biologist and molecular endocrinologist [The petitioner's] elucidation of the pro- and anti- anti-apoptotic protein expression by GRTH in gonadal cells has a great impact on the understanding of the mechanism involved in the male reproduction. He also has a broad range of experiences and knowledge, ranging from clinical reproductive endocrinology to basic molecular and cell biology and development, which, together with his many other strong qualities, will make him an outstanding scholar and scientist.

With regard to the petitioner's scientific knowledge and research experience, objective qualifications and experience necessary for the performance of a research position can be articulated in an application for alien labor certification. Pursuant to *NYS DOT*, 22 I&N Dec. at 215, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training, education, or experience that could be articulated on an application for a labor certification.

Executive Director for the Office of Sponsored Research Administration and Regents Distinguished Professor of Biology, Savannah State University, Georgia, states:

During his studies [the petitioner] found LBH 589, a novel Cinnamic Hydroxamic Acid Analogue was effective in Leukemia and Breast Cancer. Due to his initial efforts, now this drug is in Phase I clinical studies in patients with refractory hematologic malignancies.

* * *

At the NIH, [the petitioner] investigated the aspects related to the function of Gonadotropin Regulated Testicular RNA Helicase (GRTH) which include studies on genes that are concerned to apoptotic events and fertility at the meiosis in GRTH null mouse. Since *GRTH/Ddx25* was crucial for fertility in male mice, he initiated studies to determine the relevance of this gene to human spermatogenesis and demonstrated GRTH as a master regulator of spermatogenesis which prevents testicular germ cell apoptosis. His study also provided evidence for a *GRTH/Ddx25* gene mutation at G727A that might be involved in male infertility of some patients with idiopathic non-obstructive azoospermia. This mutation leads to defective phosphorylation of GRTH protein. These findings led to new openings in field of male sterility in humans.

President, Rx Biosciences, Ltd., Maryland, states:

[The petitioner] worked on understanding apoptosis in Gonadotropin Regulated Testicular RNA helicase (*Ddx25/GRTH*) Knock out mice model. He studied mouse in vivo experimental model and used an advanced gene expression profiling technology to study the regulation of sperm maturation. [The petitioner] has performed excellent work in GRTH project and is a coauthor of a JBC [Journal of Biological Chemistry] paper in this subject. His investigation revealed GRTH/Ddx25 is a master regulator of spermatogenesis which prevents testicular germ cell apoptosis. In our collaboration with [the petitioner] in genetic studies in normal and infertile Japanese patients, sequencing results showed gene mutation at G727A might be involved in male infertility and defective GRTH phosphorylation. Apart from being successful molecular biologist, [the petitioner] developed micro array analysis for germ cell specific RNA expression profiles proving himself expert in advanced gene expression profiling technology.

Department of Urology, Kanazawa University, Japan, states:

I first met [the petitioner] during our days at NICHD, NIH . . . where he and I worked together on characterization of the Gonadotropin Regulated Testicular RNA Helicase knockout mice model. He investigated the aspects related to the function of Gonadotropin Regulated Testicular RNA Helicase (GRTH) which include studies on genes that are concerned to apoptotic events and fertility at the meiosis in GRTH null mouse. . . . Our study has provided evidence for a *GRTH/Ddx25* gene mutation at G727A that might be involved in male infertility of some patients with idiopathic non-obstructive azoospermia.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

Assistant Professor of Molecular Medicine, Cleveland Clinic Lerner College of Medicine, states:

[The petitioner] has made recognizable advances in the area of Oncology and Experimental therapeutics. [The petitioner] has investigated inhibition of histone deacetylases (HDACs) as a new strategy in human cancer therapy. His research includes exploring novel approaches to target mechanisms of resistance against anti-cancer agents. The cellular models utilized in these studies include human breast cancer and leukemia cells. He investigated the mechanism of cytotoxicity of the combinations of HDAC inhibitors and HSP 90 inhibitors, or HDAC inhibitors and novel BCR-ABL kinase inhibitors, against chronic myelogenous leukemia cells refractory to treatment due to mutations or amplifications of BCR-ABL. A similar combination of HDAC inhibitor and FLT-3 kinase inhibitor was also evaluated against acute myeloid leukemia (AML) cells. These studies are very important to determine

how chaperone biology and chromatin modifications can be therapeutically exploited against human breast cancer and leukemia.

In the area of Reproductive Biology, [the petitioner's] efforts have contributed to the characterization of a mutation in infertile patients, in the gene encoding Gonadotropin Regulated Testicular Helicase (*GRTH/Ddx25*), which might be involved in male sterility.

With regard to the witnesses of record, many of them discuss the promise of the petitioner's research and what may one day result from his work, rather than how his past research already significantly influenced his field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971)

Assistant Professor of Medicine, Harvard Medical School, and Associate Biologist, Brigham & Women's Hospital, states:

In his current work, [the petitioner] is studying the cellular and molecular mechanisms of platelet homeostasis in neonates. He is focused on defining the cellular and molecular mechanisms leading to different rates of platelet production by adult or neonatal megakaryocytes (platelet producing cells residing in bone marrow). Findings from these studies will eventually lead to more appropriate therapies for thrombocytopenic neonates, and would also be applicable to the treatment of thrombocytopenia following cord blood transplants, since the transplanted cells are neonatal in origin. Such a task will surely bring substantial benefits to the nation as a whole and will give detailed insights into Stem Cell Biology. The success of this project is so important to the welfare of our country that the best and the brightest researchers are required.

As discussed, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. The observations from various witnesses about the importance of the petitioner's projects establish the intrinsic merit of the petitioner's work, but their comments are not adequate to show that his individual accomplishments are of such an unusual significance that he qualifies for a waiver of the job offer requirement. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

Associate Professor in the Department of Pediatrics, Harvard Medical School, and
Chair in Pediatric Pulmonology at Children's Hospital Boston, states:

Presently, [the petitioner] has taken the challenging task to study neonatal thrombocytopenia at prestigious Harvard Children's Hospital Boston which is the largest pediatric research center and one of the top healthcare providers worldwide. Neonatal Thrombocytopenia is a

common disease among newborn babies admitted to a neonatal intensive care unit (affecting one third of all patients). . . . Endowed with a high level of expertise in experimental as well as animal models, [the petitioner] is in an excellent position to distinguish himself in the increasingly multidisciplinary biomedical research landscape.

It cannot suffice to state that the alien possesses useful skills or a unique background. Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

a hematologist in the Transfusion Center and in the Hematology-Oncology Unit at Morales-Meseguer's Hospital in Murcia, Spain, states: "[The petitioner] is focused on unveiling the most important reasons underlying predisposition of neonates to develop severe hematologic disorders."

The preceding statements from [REDACTED] and [REDACTED] discuss the petitioner's work on research projects that post-date the filing of this petition. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's research projects that commenced subsequent to the petition's filing date in this proceeding.

In addition to the letters of support, the petitioner submitted evidence of his awards and professional memberships. We note, however, that recognition for achievement in one's field and professional memberships relate to the regulatory criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. 8 C.F.R. § 204.5(k)(3)(ii). We cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest. By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Thus, the *benefit* which the alien presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id*; see also *id.* at 222.

Nevertheless, the nature of the petitioner's awards does not establish that he meets the national interest waiver threshold. The petitioner submitted a certificate stating that he received a "2001 Student Travel Award" from the Society for In Vitro Biology (SIVB) at the "Congress on In Vitro Biology June 16 – 20, 2001." The petitioner also submitted an article from the July-September 2001 issue of the SIVB newsletter, *In Vitro Report*, reflecting that he was among several "student award" recipients at the 2001 Congress on In Vitro Biology. The petitioner's selection for an award limited by its terms to students offers no meaningful comparison between him and those in the field who have long since completed their educational studies. Further, there is no evidence from the SIVB showing the criteria for determining a recipient's eligibility for this award. Moreover, we cannot conclude that the petitioner's receipt of funding to offset travel expenses rises above the

“achievements and significant contributions” contemplated for aliens of exceptional ability or demonstrates achievement with some degree of influence on the field as a whole.

The petitioner submitted a July 7, 1997 letter from the Council of Scientific and Industrial Research (CSIR), Human Resource Development Group, Examination Unit stating: “This is to inform you that you have qualified the above Examination for consideration for Award of Junior Research Fellowship in LIFE SCIENCES under the CSIR Fellowship Schemes. The Award of Fellowship will be subject to your satisfying the eligibility conditions” We cannot conclude that successfully passing a standardized test and qualifying for a “Junior Research Fellowship” establish that the petitioner will serve the national interest to a substantially greater degree than would an available worker with the same minimum qualifications. We note that eligibility for the preceding fellowship was limited to students seeking to pursue graduate studies.

The petitioner submitted a December 6, 2001 letter from [REDACTED] International Association for Plant Tissue Culture & Biotechnology (IAPTC&B), stating:

I would like to congratulate you on . . . being selected as one of the recipients of an IAPTC&B Fellowship to attend the 10th IAPTC&B Congress.

* * *

Please confirm that you accept the fellowship and will personally present your poster at the Congress.

Your fellowship will cover the registration fee (which includes the opening reception, three boxed lunches, the banquet, and a copy of the proceedings) and a shared hotel room

The petitioner also submitted a listing reflecting that he was among 84 “Fellowship Recipients” at the 10th IAPTC&B Congress. There is no evidence from the IAPTC&B showing the criteria for determining a recipient’s eligibility for this fellowship. Nevertheless, we cannot conclude that the petitioner’s receipt of funding to attend this conference shows that he served the national interest to an extent that justifies a waiver of the job offer requirement.

The petitioner submitted a Certificate of Achievement from the International Crops Research Institute for the Semi-Arid Tropics (ICRISAT) Training and Fellowships Program for his “successful completion of Apprenticeship in Cellular and Molecular Biology Division [CMBD] . . . from 20 May to 01 July 1996.” The petitioner also submitted a page from the May 31, 1996 issue of the *ICRISAT Happenings* newsletter identifying him as an “apprentice” and stating that he was “doing his summer project work with CMBD, studying molecular biology techniques.” The petitioner’s successful completion of a six-week apprenticeship program is not indicative of influence on his field and offers no meaningful comparison between him and those in his field who have long since completed their molecular biology training.

In response to the director's request for evidence, the petitioner submitted a certificate from the American Society for Biochemistry and Molecular Biology (ASBMB) issued to him "in recognition of . . . participation in the ASBMB Graduate/Postdoctoral Travel Award Program in San Diego, CA, April 4-5, 2008." The petitioner received this certificate subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, this certificate is simply an acknowledgment of the petitioner's participation in the program.

The letter from [REDACTED] mentions the petitioner's receipt of a "2007 Scientific Travel Award from Sigma-Aldrich." The record includes a May 14, 2007 e-mail stating: "On behalf of the Sigma-Aldrich Team, we would like to thank you for stopping by our booth at Experimental Biology and taking our Gene Hunt Challenge. We are pleased to inform you that you are the lucky winner of our \$3,000 Scientific Travel Award. . . . Thank you for playing!" There is no evidence from the Gene Hunt Challenge organizer showing the criteria for determining a recipient's eligibility for this travel award. Further, the phrases "you are the lucky winner" and "Thank you for playing!" suggest that winning this award was based on a game of chance rather than significant achievement in the field of research.

The director denied the petition stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director found that the petitioner had not established that his past accomplishments were of such unique significance that he qualifies for a waiver of the job offer requirement.

On appeal, counsel argues that the director improperly reviewed the letters of support, the petitioner's publication record, his conference presentations, and the submitted citations to his body of work (less than a dozen in aggregate). Much of this documentation has already been addressed in our preceding discussion of the evidence.

With further regard to the letters of support, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from individuals selected by the petitioner is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. In evaluating the recommendation letters, we note that letters containing mere assertions of skill and experience are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. Regarding the letters from those who have interacted with the petitioner, while such letters are important in providing details about his past activities, they cannot by themselves establish his influence over the field as a whole. In this case, the content of the recommendation letters does not establish that the petitioner's work has already had a significant national impact or otherwise influenced his field as a whole.

Regarding the petitioner's conference presentations, we note that participation in scientific conferences and symposia of the petitioner's kind is routine and expected in the scientific community. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not significantly distinguish the petitioner from others in his field

In regard to the citations of the petitioner's work, the petitioner submitted evidence showing that his body of published and presented research has been independently cited less than a dozen times. The small number of submitted citations is not sufficient to demonstrate that the petitioner's findings were particularly influential throughout his field. While petitioner has contributed to research projects undertaken by the H. Lee Moffitt Cancer and Research Center at the University of South Florida, NIH, and Children's Hospital Boston (Harvard Medical School), the petitioner has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. We note that the petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYS DOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.